

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**DAVID UBALDO LIMAS-RIVERA,**

Petitioner,

v.

No. 10-cv-1416-PK  
OPINION AND ORDER

**DON MILLS,**

Respondent.

Anthony D. Bornstein  
Federal Public Defender's Office  
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Attorney for Petitioner

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Attorney General  
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Attorneys for Respondent

**SIMON, District Judge:**

On November 3, 2011, the Honorable Paul Papak, United States Magistrate Judge, filed Findings and Recommendation (“F & R”) (Doc. # 21). The matter is now before me pursuant to the Magistrates Act, 28 U.S.C. § 636(b)(1)(B), and Rule 72(b) of the Federal Rules of Civil Procedure. Under the Magistrates Act, the court may “accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate’s findings and recommendations, “the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id*; Fed. R. Civ. P. 72(b)(3); *Dawson v. Marshall*, 561 F.3d 930, 932 (9<sup>th</sup> Cir. 2009). De novo review means that the court “considers the matter anew, as if no decision had been rendered.” *Dawson*, 561 F.3d at 933.

Petitioner has filed timely objections to Judge Acosta’s recommendation that his Petition for Writ of Habeas Corpus (doc. # 2) be denied and the case dismissed with prejudice. After de novo review, I adopt the F & R.

### **PETITIONER’S OBJECTIONS**

Petitioner makes the following objections:

1. The “implicit finding” that Limas-Rivera’s assertions regarding his trial counsel’s conduct lack credibility and are unpersuasive (F & R p. 10)
2. The finding that Limas-Rivera’s ineffective assistance claim is not adequately supported.
3. The finding that “on this record, Limas-Rivera has failed to rebut the post-conviction review (“PCR”) extensive factual findings by clear and convincing

- evidence.” (F & R p. 11).
4. The finding that Limas-Rivera has not met the AEDPA standard for habeas corpus relief under 28 U.S.C. § 2254(d) (F & R p. 11).
  5. The recommendation that the petition should be denied.
  6. The recommendation that the District Court not grant a Certificate of Appealability.

Limas-Rivera’s objections are not accompanied by argument, except for the statement that he “relies on the legal arguments presented in his Memorandum of Law in Support of Petition for Writ of Habeas Corpus filed on May 13, 2011.” (Doc. # 24)

## **DISCUSSION**

I find no merit in Petitioner’s assertion that Judge Papak made an “implied finding” that Limas-Rivera’s assertions lacked credibility. Judge Papak was acting within his authority in finding Limas-Rivera’s assertions unpersuasive.

I find no factual or legal error in Judge Papak’s conclusions that Limas-Rivera’s ineffective assistance claim was not adequately supported, that Limas-Rivera had failed to rebut the PCR’s factual findings by clear and convincing evidence, and that Limas-Rivera had not met the standard for habeas corpus relief under the AEDPA.

I ADOPT the Findings and Recommendation (doc. # 20).

IT IS SO ORDERED.

Dated this 29<sup>th</sup> day of December, 2011.

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/s/  
Michael H. Simon  
United States District Judge